EXHIBIT B
PART 1

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-reg

- -x

In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

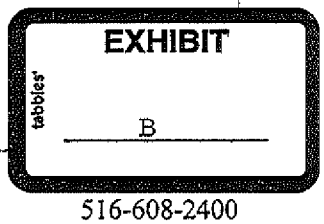
October 4, 2010

3:06 PM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE



HEARING re Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce 363 Sale Order and Approved Deferred Termination (Wind-Down) Agreement

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good morning -- or afternoon. Have seats, please. All right. GM. Motors Liquidation Company. Rally Motors. Mr. Lederman, do we have some preliminary matters that I had become unaware of?

MR. LEDERMAN: No, Your Honor, we don't. The only matter before you is a matter that you just introduced. So I was just going to introduce the parties and turn over the lectern to them.

THE COURT: All right. Well, I know Mr. Steinberg and Mr. Snyder. Why don't the remainder of you folks introduce yourselves.

MR. DAVIDSON: Scott Davidson from King & Spalding --

THE COURT: All right.

MR. DAVIDSON: -- for New GM.

MR. OXFORD (TELEPHONICALLY): Greg Oxford, Isaac Clouse --

MR. BLATT: Steven Blatt from Bellavia --

THE COURT: Just a minute, please. First, I need the folks in the courtroom to introduce themselves.

MR. OXFORD: Okay, Your Honor.

THE COURT: And then if people are on the phone, I'm going to have to ask that they defer to people in the courtroom unless people in the courtroom hand off to them.

MR. BLATT: Steve --

THE COURT: All right. Just a minute, please, gentlemen.

MR. BLATT: Yes, Your Honor.

THE COURT: All right. With Mr. Snyder?

MR. BLATT: Yes.

MR. SNYDER: Yes, Your Honor. I'm sorry. Go ahead.

MR. BLATT: Steven Blatt, Bellavia Gentile, 200 Old Country Road, Mineola, New York, on behalf of Rally Auto Group.

THE COURT: Right, Mr. Blatt. Okay.

THE COURT: Now, is there a gentleman on the phone who wanted to introduce himself?

MR. OXFORD: Yes, Your Honor. It's Greg Oxford, Isaac Clouse Crose & Oxford also appearing with Mr. Steinberg on behalf of General Motors LLC.

THE COURT: All right, Mr. Oxford. Okay. Gentlemen, make your presentations as you see fit. But I'm going to need you to address the following needs and concerns. But first, let me lay on my frustration with you guys, both sides. I cannot, for the life of me, understand, Mr. Snyder and Mr. Blatt, why you can't follow the requirements of my case management orders and give me a table of cases and table of authorities as those rules require in baby talk. When I'm trying to compare the two submissions and see what you guys said about a particular case or, for that matter, how you

organized your arguments, that is a source of incredible difficulty and frustration for me. And, Mr. Steinberg and Mr. Oxford -- Mr. Oxford, I think you at least have been in this case before. How many times have I said that I don't want to use -- see the word "passum" especially when it refers to the most important case in your whole brief on a lot of these issues? I'm not expecting a response now. You can address it when it's your turn.

Gentlemen -- Mr. Snyder and Mr. Blatt, if you want to make your subject matter jurisdictions, you can, but it doesn't seem to me that this is about subject matter jurisdiction in any way, shape or form. Frankly, I think you missed the boat when you were talking about related-to jurisdiction. It seems to me that this is a poster child for arising-in jurisdiction and the principle that bankruptcy judges have the authority to enforce their own orders. And when an agreement says that the bankruptcy court will have exclusive jurisdiction to deal with a particular matter and then the order implements that, I have some trouble seeing how it can be to the contrary. If you nevertheless want to continue to the contrary, you got to help me with Petrie Retail and Millenium Seacarriers on those points.

Now, I sense that both sides agree that there is no right of judicial review under the Dealer Arbitration Act and that the Federal Arbitration Act applies only to contractual

agreements to arbitrate. So therefore, we're on a little bit of -- or totally implied remedies if and to the extent they exist. Now, Mr. Steinberg, I want to see whether your argument proves too much. And you can help me with that if I posit to you a situation where the arbitrator is taking bribes or he's taking an ex parte communication because my belly would tell me that even if there weren't an expressed right of judicial review in that situation that Rally Motors, if it were on the losing end of that type of situation and, of course, if it came to me, could come and say, Judge, I need relief from that kind of thing. But, of course, Mr. Snyder and Mr. Blatt, that isn't what you're alleging here. In essence, you're alleging that the arbitrator made an error of law. And you haven't shown me any case in which the arbitrator was told that he had to deal with these franchise agreements double or nothing. And it strikes me as a garden variety claim of legal error. So help me if I'm wrong on that.

Now, I don't know how many times I and the other bankruptcy judges in this district have had 363 orders and confirmation orders provide for continuing jurisdiction typically to follow up on the implementation of things that were in the sale order and in the plan or agreements that were provided under either. Counterparties come into the court all the time putting their money on the line to get benefits by dealing with the bankruptcy court. And that's an important

reason, as at least one of the cases that was quoted to me says, why we have provisions of this character. And I need your help in understanding why I should say "Never mind" to provisions of that type. But if there is authority for some kind of implied judicial review that I, in contrast to a district judge exercising diversity jurisdiction, could issue, or even if it were deemed to be 1331 federal question jurisdiction -- though I don't see the provision of the U.S.C. under which the federal right arises. I mean, I see why you could compel GM to arbitrate but New GM didn't quarrel with your right to arbitrate that I need help on that.

So, Mr. Snyder, will it be you or Mr. Blatt?

MR. SNYDER: It'll be me, Your Honor.

THE COURT: Okay.

(Pause)

MR. SNYDER: Your Honor, as I think the analogy for our purposes or the point where we start is the AAA commercial rules. And I focus on those, Your Honor, only because, as the Court pointed out, I don't think anyone disputes that when both parties sat down to the arbitration that the commercial rules apply. Now, GM states that it objected to the use of the commercial rules. But be that as it may, the scheduling order, in particular, paragraph 1, which is annexed to our objection as Exhibit F, specifically states that the commercial rules apply. And one of those rules, Your Honor, is 48(c) which we

relied on extensively in our papers but it states, and I quote -- it's short: "Parties to an arbitration under this rule shall be deemed to have consented. A judgment upon the arbitration award may be entered into any federal, state or court of competent jurisdiction." Now it doesn't say they have to agree. It says that they've deemed to have consented. And so our argument is, Your Honor, that if the AAA commercial rules apply and GM is deemed to have consented then, naturally, there is a -- the arbitration award is final and binding and there has to be a right of judicial review under the terms of 48(c). Now we cited to the Idea Nuova case for the proposition that although that was a contract case, where the contract is silent as to whether the rights of judicial review apply, the Courts will impute 48(c) not because the parties agreed to arbitrate, Your Honor, but because by going forward with the arbitration, because the commercial rules themselves apply, they're deemed to have consented to both the arbitration and the entry of a final judgment. And, Your Honor, that's based solely on facts that are not in dispute.

THE COURT: Mr. Oxford, do you want to mute your phone, please?

MR. OXFORD: I'm not sure I know how to do that. We could --

THE COURT: All right. CourtCall, mute them. Go ahead, Mr. Snyder.

MR. OXFORD: I didn't hear you, Your Honor. I'm sorry.

THE COURT: I'm telling CourtCall to mute you, Mr. Oxford. Go ahead, Mr. Snyder.

MR. SNYDER: Thank you, Your Honor. Now we agree, Your Honor, as GM has pointed out that the Dealer Arbitration Act is silent as to judicial review. But we contend in addition to the AAA commercial rules giving the federal court subject matter jurisdiction that, as Your Honor pointed out, that if a federal question presents itself under 28 U.S.C. 1331 then the California district court can rely on that federal question to possess subject matter jurisdiction. And that federal question is presented here, to wit. Is the removal of a Chevrolet brand the granting of a "covered dealership" as that term is defined under 747(a) and (d)? It's stated specifically, Your Honor, in Rally's statement. Does the removal of a Chevrolet brand constitute a "covered dealership"? So we have a federal statute that Rally is asking a federal court to interpret and we have the Vaden case which I cite to at -- and -- 129 S. Ct. 1262. In that case, the Supreme Court held that a federal court could look through the arbitration, Your Honor, to determine whether the controversy in question arises under the federal law so that the court has federal question jurisdiction. That's all we're asking the federal court to do. Interpret a federal statute on a federal

question.

And in addition, Your Honor, we believe the federal court has jurisdiction for the issue that Your Honor has raised and is the most troubling, at least to me, that there is no right to judicial review. GM doesn't cite to any federal statute, while may be silent or limited, that did not allow for judicial review. Which goes right to the due process argument and the constitutionality of the statute itself.

Your Honor, the arbitrator didn't have to take bribes. Let's just say we end this hearing and regardless of what happens GM says, I'm not reinstating you. I don't care what Judge Gerber says or anyone else says.

THE COURT: Well, isn't that the easier case because wouldn't you, Mr. Snyder, be able to come back to me in about ten minutes and say that New GM isn't complying with the arbitration award? And to the extent that I understood your 48(c) argument, the language is "deemed to have consented to enforcement". And if you say -- let's take what I understand to be the case. You won three-quarters of -- or your client won three-quarters of the arbitration before the arbitrator. And suppose GM stiffs you on those three-quarters where you prevailed -- your client prevailed. I would have thought -- and maybe Mr. Steinberg should be heard on this because if he contends to the contrary, I guess I should know it. But I would have thought that you could come back to me and say make

GM -- New GM comply with the arbitrator's award. But you're not trying to enforce the arbitrator's award. You're trying to attack it. You're trying to attack the one-quarter of it you don't like.

MR. SNYDER: Your Honor, we're trying to say that if there is judicial review of a statute that does not allow for judicial review that the constitutionality of the statute, the due process argument is the district court possesses jurisdiction to that. There's a crucial difference, Your Honor -- and to me, this is the crux of our argument. Putting the core related and Petrie aside for the moment, whether this Court has jurisdiction or not is to me not the issue. The issue is whether the California court has jurisdiction. What GM is saying is this Court has sole and exclusive jurisdiction. That means of the 600 dealers that had their claims arbitrated with GM, if they are unhappy with a portion of the award then all 600 nondebtors with New GM, a nondebtor, that this Court has sole and exclusive jurisdiction to determine under the Federal Arbitration Act what a covered dealership is. And I'm suggesting that the California district court, whether as a federal question or for constitutionality purposes, might also have that jurisdiction because it can't be that as a result of the wind-down agreements, when the Dealer Arbitration Act was passed that the Court was willing to say we're going to pass the Dealer Arbitration Act to give you dealers another bite at

the apple. But you have to go back to the bankruptcy court if you want it enforced. Now maybe this Court does have related-to jurisdiction but it couldn't be, Your Honor, that there is no right of judicial review and Congress' intent was that everybody has to come back here. And that's --

THE COURT: I don't want to interpret you, Mr. Snyder, but it wasn't related-to jurisdiction that I think is in play here. I think it's arising-in jurisdiction, the second of the three prongs under 1334.

MR. SNYDER: Understood, Your Honor. And again, even if this Court has arising-to jurisdiction, that is not what we're arguing. They are arguing -- and remember, Your Honor, the motion seeks to compel us to withdraw a lawsuit in federal court because the district court does not have jurisdiction. And I think for the three reasons I've stated, the plain language of 48(c), the introduction of a federal question and the constitutionality of a law that does not allow for judicial review, gives the California district court jurisdiction. It's not to say that this Court doesn't have jurisdiction but we didn't start in this court. We started in the federal court in California. They filed an answer. They didn't move to dismiss. And then three days later, they filed the motion here. Not by order to show cause because they were so concerned about the California's court jurisdiction but by regular motion. The -- we, in deference to this Court, didn't

go into the California court to seek a stay. We told them that we would come here and explain to this Court why the Court, the California court, has federal court jurisdiction. They don't reply to our arguments about Vaden and the ability of a federal court to go through -- look through an arbitration. The decision is powerful, Your Honor, to the extent it allows you to look through the arbitration and see if a federal question is presented. That's our issue, that federal questions are presented, constitutionality presented. Normally not an issue but in a case where a statute is silent as to the right of judicial review, the implication or the logical extension of their argument is that everybody has to come back here. And it is submitted, Your Honor, that that's not what Congress intended by leaving the statute silent. We believe what they intended is that the arbitration rules will allow the dealer, the aggrieved dealer, to go into a court of competent jurisdiction to get the relief they seek.

And although the judicial estoppel argument has gone up and back, Your Honor, in their complaint, in paragraph 3 in the Santa Monica case, they don't just rely on diversity when they seek to compel Santa Monica to execute the settlement agreement. They rely on 28 U.S.C. 1331 to get the district court's attention. They rely on the Dealer Arbitration Act to get the Court to execute -- to restrain Santa Monica. Then they come here and say this Court has sole and exclusive

jurisdiction with respect to matters in the Dealer Arbitration Act. They didn't come here, Your Honor, when Santa Monica sought to exercise jurisdiction and refused to sign that settlement agreement. They went to the California district court. And so, to argue that sole and exclusive jurisdiction sits here but to rely on federal jurisdiction not just diversity, 28 U.S.C. 1331 jurisdiction in California, to me, rises to the level of judicial estop.

The last argument, Your Honor, which was the first one you raised, is the applicability of Petrie and the ability of the Court to enforce its orders. And there's no doubt that buyers have expectations and they want this Court to enforce them and they have a right to come in here and seek that. But they have -- every provision of the wind-down agreement that they have pointed to, other than the covenant to sue, is not being implicated. We were able to sue, commence an arbitration, because the Dealer Arbitration Act allowed us to. They actually state in their papers that us going into California district court violated the covenant to sue. Well, how can that be? How can that be that the statute allows us to go to Califor -- and commence an arbitration but doesn't allow it to enforce it anywhere?

The wind-down agreement is still the wind-down agreement. The dealer, Rally, and the other 600 dealers still have certain obligations that they need to fulfill by October

31st. But the covenant not to sue is not one of them because the statute that was codified in December 2009 gave the dealer certain rights. And they are limited rights. They're not happy with the outcome. Rally believes that the definition of covered dealer was inappropriately misinterpreted by the arbitrator. There is nothing in the wind-down agreement or the 363 order, Your Honor, that suggests they would have to come back here for that.

Now, it's unfortunate that the statute is silent. But issues of due process and federal question as well as the AAA rules allow Rally to go into court in California to redress those arguments. That's our position. Again, we're not suggesting or it's minimally relevant that this Court has jurisdiction. Our question is does the California court have jurisdiction. GM thought it did under 28 U.S.C. 1331. So do we. And that's the reason we object to them saying this Court has sole and exclusive jurisdiction under the wind-down agreements as if the Dealer Arbitration Act didn't exist.

THE COURT: Well, you hit on something that I'm glad you did, Mr. Snyder, because I want both you and Mr. Steinberg to address it when it's your respective turns. And, of course, it's your turn now. I would have thought that the Dealer Arbitration Act trumps my order and the wind-down agreements to the extent they're inconsistent. But that the duty of any Court is to try to construe them together to achieve harmony

between them so there is the minimal clashing between the two and that where, of course, the later Dealer Arbitration Act speaks to something, it controls over my order but only to that extent. Do you think I'm off base from that?

MR. SNYDER: I do not, Your Honor.

THE COURT: All right. Keep going.

MR. SNYDER: And, Your Honor, I or Rally do not see the ability to confirm a judgment, as that term is defined in 48(c), or if the district court should allow, modify or vacate the judgment under the commercial arbitration rules as being anything other than an extension of the arbitration which was codified in the Dealer Arbitration Act. It isn't a violation of the covenant not to sue under the wind-down agreements because under the wind-down agreements in July 2009, this was not a sparkle in anybody's eye. No one knew what Congress would end up doing six months later. They're looking to prohibit us from doing something that wasn't even contemplated at the time Your Honor entered that order. This came six months later. And so the rules changed partially. I'm not suggesting the wind-down agreements are -- they say aggregated -- none of that. But the covenant to sue was. And they were allowed to commence arbitrations against New GM in order to get rights back, thumbs up or thumbs down.

THE COURT: Do you think it covers all covenants or all suits or can you harmonize them by saying that if you win

in the arbitrations that Congress has now given you, of course you have the right to enforce that if your opponent, which in this case is New GM, is so dumb as to try to welsh on the arbitrator's ruling. But that's really how they -- separate provisions are best read together.

MR. SNYDER: Your Honor, there's a reason why -- you call it dumb, but there's a reason why the fifty states and every federal statute except this one that I've seen has the right of judicial review. It's because if there is no enforcement of a final or binding arbitration then the other side could say, ha, forget it, I'm not doing anything 'cause you have no place to go.

THE COURT: Again, I remain troubled by the distinction between enforcing the award which my tentative, California style subject to your opponent's right to be heard, is that if New GM hadn't complied with the arbitrator's award, I would make it, and to attack the arbitrator's award which invokes separate policy considerations.

MR. SNYDER: Well, Your Honor, I would say that it seems as if the rules which required findings of fact were set up for judicial review. If the arbitrator had simply said, Your Honor, we're ruling against Rally because I know Larry Mayle, the president, and I don't like him, where could we go? If the Court is suggesting if that was the ruling that we could go into this court to overturn or vacate an arbitration for

manifest disregard of fact and law out of an arbitration coming out of the Dealer Arbitration Act, I don't see it. I see it as being a federal question that allows judicial review for manifest disregard of facts and law through a federal court. That's what the Supreme Court said in Vaden, that you can look through the arbitration to see if a federal question exists. GM doesn't even cite to Vaden in their reply brief. But that is uniquely a federal question. Is Chevy a covered brand as that term is defined under 747(a) and (d)? What could be more of a federal question than citing to the statute itself. This is not an abstract referral, Your Honor, where Rally was trying to get around state jurisdiction. This is questioning the words of a federal statute. And Rally would have never thought to come to this court, Your Honor, as a result of an arbitration to enforce or to ask this Court to make findings of fact as to whether Chevy is a covered dealership as that term is defined under 747(a) because although this Court might have jurisdiction, the California court certainly has jurisdiction.

And, Your Honor, that's what we see as the difference. When I speak about losing or diminishing jurisdiction in the sales process, I'm not suggesting that buyers can't come back to get the benefit of their bargain. But this was not the benefit of anybody's bargain because the Dealer Arbitration Act wasn't even in existence at the time. They couldn't have said we want this statute because we want no

judicial review from the dealers. What are you talking about? There's no right to review anyway. There's a covenant to not to sue. The Dealer Arbitration Act hadn't even been introduced yet. So they can't say they didn't get their expectation 'cause there was no expectation. This was six months later. So I don't see this as an enforcement of an order 'cause there was no expectation that they would have that right.

(Pause)

THE COURT: Okay. Mr. Snyder, I'm going to give you a chance to reply but is this a good time to hear from Mr. Steinberg?

MR. SNYDER: Yes, Your Honor. Thank you.

THE COURT: Thank you.

(Pause)

MR. STEINBERG: Good afternoon, Your Honor. I think Your Honor's questions were very incisive and I will try to answer them as best as I can and to try to point out why I think my colleague has not fully answered Your Honor's inquiry. I think Your Honor is correct that the real issue here is there was a wind-down agreement. Your Honor approved the wind-down agreement that was part of the sale process. And then subsequently, Congress acted under the Dealer Arbitration Act. So how do you mesh what you had done versus the later congressional statute?

And I think it's important to distinguish what does

the Dealer Arbitration Act do and what it specifically did not do. And the thing that it did, and I think my colleague has agreed with this, is it provided dealers who either signed the wind-down agreements or had their dealership agreements rejected in either the Chrysler or General Motors cases a new right created by a federal statute to be reinstated to the dealer network of the debtor or the purchaser of the debtor's assets. And in order to avail themselves of that right, they had to file timely notices in accordance with the Dealer Arbitration Act for binding arbitration. And I think my colleague was correct. It was either up or down. Either you're reinstated or you're not reinstated. And the Dealer Arbitration Act told arbitrators they had seven factors, nonexclusive, to take a look at for purposes of making that determination. And there was specific and very, very tight deadlines that were put in for the arbitration. You had to act to ask for arbitration within forty days. You had six months to complete the arbitration. The arbitrator had seven days to make its ruling and that everything had to be done by July 14th because the legislative intent of the statute which was to try to create what Congress thought was a better balance between the rights of dealers and the rights of the manufacturers, the legislative intent was we need to have a streamlined process that would not otherwise get bogged down with discovery or litigation. We both quote -- at least our reply quotes from

the legislative history to the statute which is fairly sparse. But the legislative history refers to the need to have something streamlined and quick and the statute does not provide for judicial review unlike the Federal Arbitration Act in Section 9, 10, 11 and 12. There are specific provisions which talk about what a Court can do or not do in connection with something that is governed by the FAA. This clearly is not governed by the FAA. The FAA governs agreements where the parties had agreed to arbitrate. This was not one of those situations. This was a case where Congress had imposed the obligation or the right for the dealer to seek arbitration under specific circumstances but it wasn't a contractual obligation that the parties had bargained for. So the FAA, which is leadered (sic), the cases relating to the FAA, the judicial review relating to an FAA, which my adversary recites in his papers, they really have no relevance here. And I think Your Honor was right. There is no judicial review. And that was, I think, intentional. And I think my adversary says where is it that you can never get judicial review? You know, Congress passes a statute not -- imposing a new right and then says that's -- we'll have a procedure to implement that statute and that's it. And there's no more judicial review.

THE COURT: Well, pause, Mr. Steinberg, because I'm wondering if that proves too much. Suppose the arbitrator's taking bribes. And suppose the forum is this court and the

dealer's been victimized by the arbitrator taking bribes. You're telling me that I can't look at that?

MR. STEINBERG: I'm not sure if the right remedy would have been to go to the AAA and say that there was an invalid arbitration and seek the remedy there to invalidate the results of the arbitration. But --

THE COURT: So you're going to take that and -- bring it down and give it to the marshals and then you can return to the courtroom.

MR. STEINBERG: But I will say, Your Honor, that the hypothetical that you posed which is that if there was a violation of what Congress had enacted because they had bribed the arbiter of the resolution, it would seem to me that there needs to be some kind of review. And maybe it would be Your Honor who has the review. I'm not sure whether it would be the AAA that would review it. But it would seem to me in a bribe circumstance that that would be the case.

But I think critical for what my adversary has argued which is that he's raised the potential for the constitutionality of the Dealer Arbitration Act because there is no judicial review, I don't know where that argument goes for him because the Dealer Arbitration Act was a right given to the dealers to potentially seek reinstatement. If you declare the statute unconstitutional then they don't have that right. If he's asking you to put in to the statute that which doesn't

exist which is to, in effect, write the judicial review section when Congress didn't write it, I don't think Your Honor has the ability to do that.

And I don't think -- you know, they spend ten pages of their brief saying how we didn't comply with provisions that is the judicial standard under the Federal Arbitration Act. And I would say to Your Honor that that's irrelevant because that's not -- there is no standard of judicial review. And you can't pick something from another statute and say that's what I'm going to use here in order to make it constitutional.

Now, there is situations where Congress has given a right to a party and there is no judicial review. We cited in our papers the Switchmen case which was actually quoted in Thomas. And we specifically highlighted the language which said that "A review by the federal district court of the board's determination is not necessary to preserve or protect that right." Congress, for its reasons on its own, decided upon the protection of the right which it created. And if you look at Thomas itself, they talked about the concept of where Congress has written legislation where it asked an agency to make a decision. And the issue was if the agency did something wrong, can it get judicial review. And there are certain statutes that provide that there is no judicial review. So the Thomas case when it was written referred to Medicare reimbursement and said that an agency's review relating to

Medicare reimbursement is not subject to judicial review. So --

THE COURT: And Switchmen dealt with the Railway Labor Act?

MR. STEINBERG: Yes.

THE COURT: And it was at least Thomas that was the use of your "passum" if I recall.

MR. STEINBERG: Yes. And I apologize for that, Your Honor.

So we have a situation here where there was a legislative reason why things were done on a streamlined basis. There is no language that talks about judicial review and there is no issue I believe relating to constitutionality. But if it is, I don't think it gets them anywhere. And it was nice that they made this a central part of their oral argument when it was relegated to a footnote in their brief which -- without any real challenge other than just a throw-away that they question whether it could be constitutional if there's no judicial review.

Your Honor --

THE COURT: At least it got your attention enough for you to cover it from pages 8 through 10 of your reply.

MR. STEINBERG: Yes, Your Honor, because I did think it was an important issue and that Your Honor would want the benefit of some briefing. But I did not think that that was

the center of the argument.

Similarly, you'll notice how their argument is morphed because their papers said Your Honor didn't have jurisdiction, didn't have core jurisdiction, didn't have related jurisdiction, asked you to defer to the public policy of the Federal Arbitration Act, to defer to an arbitration when they weren't prepared to necessarily defer to arbitration. And now they, today, said well, we really didn't say you didn't say you didn't have jurisdiction. You just don't have exclusive jurisdiction. We think it may be concurrent jurisdiction. So they did move as well on that.

But I think, Your Honor, that the reason why you do have exclusive jurisdiction and the reason why the wind-down agreement is implicating is because there is no judicial review of what the arbitrator did. If there is no judicial review -- I think everybody agrees that the statute doesn't provide for it explicitly. If there isn't then what's left? Because the other thing that was critical as to the interplay between the Dealer Arbitration Act and the wind-down agreement, the other thing that's critical is that the Dealer Arbitration Act didn't abrogate totally the wind-down agreement. I think my colleague, my adversary, has agreed that it didn't totally abrogate it. There are specific provisions that survive. And so, that if you have an arbitration which has been completed because all the arbitrations had to be completed by July 14th,

and that's it then what's left on the areas where there was no reinstatement, the thumbs down for the Chevrolet dealership, you're back to being governed by the wind-down agreement. The wind-down agreement provided that you couldn't sue New General Motors. That still applies. There (sic) was abrogated solely to the extent that the Dealer Arbitration Act allowed for this binding arbitration remedy to be afforded to dealers who availed themselves of the opportunity to seek arbitration within forty days of the enactment of the Act. Otherwise, the wind-down agreement stayed in effect. And the wind-down agreement stayed in effect now for purposes for this entire period of time that the Rally dealership was not entitled to buy New General Motors vehicles because the wind-down provision for that still stayed in effect.

THE COURT: Mr. Steinberg, do you agree that if New GM hadn't complied with the arbitrator's award on the three brands for which the arbitrator ruled in Rally's favor that Rally could have come back here to enforce it with or without the no-sue clause?

MR. STEINBERG: Yes.

THE COURT: All right.

MR. STEINBERG: Yes. I agree with that because there, the provision, I believe, is ancillary to the arbitration decision. They're looking to implement and enforce the arbitration decision. And I think that if it wasn't being

done since the arbitration is over, they do need to have some kind of remedy. And they should be able to come back to this Court. But I do think it's this Court because I do think that part and parcel of the reason why there was exclusive jurisdiction language in the sale order, exclusive jurisdiction in the wind-down agreement that everybody who signed the wind-down agreement signed was that New General Motors had bargained for as part of the sale process -- had bargained for one forum, this Court who had approved the transaction, to handle anything relating to an enforcement or dispute relating to these agreements. And to take it more broadly, to handle anything that related to, in effect, the assignment and the continuation of the dealership network from Old GM to New GM. And I think that that was what New GM had bargained for here. And I think Rally understood that because they not only were passive on the entry of the sale order but in the wind-down agreement they specifically recognized the exclusive jurisdiction. And that didn't change. That didn't change. That's what New GM had bargained for.

The issue, Your Honor, with regard to judicial estoppel I think could be easily dealt with by the fact that in the case where New General Motors went to a court, it was to enforce a settlement agreement. The Dealer Arbitration Act specifically says that if you're going to settle then there is no arbitration and that the arbitrator has nothing to do. So

when parties settle, they take themselves out of the Dealer Arbitration Act totally based on the expressed language of the statute. Then if someone --

THE COURT: Why didn't New GM come to me to enforce that order?

MR. STEINBERG: We could have, for sure, Your Honor.

THE COURT: I'm sorry?

MR. STEINBERG: We could have, for sure, done that.

Your Honor, the issue with regard to Rule 48(c) of the Commercial Arbitration Rules, we did indicate that we weren't fully adopting the Commercial Arbitration Rules. The Commercial Arbitration Rule, Rule 48(c), is for purposes of seeking enforcement of an arbitration award and they are not seeking enforcement of an arbitration award. And the AAA rules itself say that the rules will be applied only to the extent that it's not inconsistent with the Dealer Arbitration Act. And we believe to try to, in effect, implicitly put in a judicial review concept through a rule that says that you can move for enforcement where we had protested it is inconsistent with the Dealer Arbitration Act which didn't provide for judicial review.

Now, the fact that -- I think my adversary pointed out to the fact that October 31 is fast approaching. And under the wind-down agreement, the Chevrolet dealership will be terminated. And the new dealership that New GM had promised to

-- an entity that used to be a Saturn dealership that operated in the area is going to be given. And there are rights that people have because of that unless something happens in this court or another court. But there is this ticking deadline that is there. And they never -- they filed a motion -- a complaint in August. They themselves have never moved for an injunction or for a stay or to try to continue the October 31 deadline. And I don't think that they can. I think that they had agreed that it would get terminated. I think even the Dealer Arbitration Act specifically wanted finality to these issues and to have finality because it's not only New GM's rights that are being implicated but we've had a dealer who's effectively been on hold since December of 2009 waiting to go in on November 1st. And their rights will be implicated as well.

I think that, Your Honor, that with regard to the interplay between the wind-down agreement and the Dealer Arbitration Act -- the two most critical things is that there is no judicial review that's specified in the statute. And because there's no judicial review, you're left with a wind-down agreement that had not been, in effect, modified at all except for the overlay of allowing for binding arbitration on a right given by Congress. And therefore, the commencement of the lawsuit after the award had been given by the arbitrator is a violation of the wind-down agreement and the provisions that

say that you should not sue and you should not interfere.

I will note, because it hasn't been said, that the arbitrator gave his award in June and New General Motors gave a letter of intent for the other four dealerships that the arbitrator said had to be reinstated. And Rally has been reinstated for those other four dealerships. And this --

THE COURT: Oh. So when I said it won three-quarters, actually it won four-fifths? Or with respect to four of the five franchises that it once owned?

MR. STEINBERG: That's correct. So they are operating right now. And they got their letter of intent which was supposed to be given by New General Motors, I think, with ten days of the arbitration award. It was only after that they were well down the road to getting the four in place that they decided to sue for the fifth. And, Your Honor, our brief tries to strip away the layers. And to some extent when you orally argue, you try to figure out how much of all the arguments you have to make. But this was even governed by the Federal Arbitration Act. I'm not even sure whether -- what they're arguing about would be subject to any kind of judicial review anyway. We do set forth in our brief the arguments that we think show that there was -- that the arbitration award was consistent with what should have been done because there was not one franchise agreement but there were five franchises agreement. And it's been dealt with because they've taken four

of the five and we still have one that's outstanding. And we point to the language of the sales agreement which talk about "General Motors separately on behalf of its division identified" and talk about the "separate" nature of each of these agreements. The wind-down agreements uses the plural, doesn't use the singular for purposes of talking about these agreements. And not to be overly cute about the argument, but if they were right that this was one agreement and not five agreements and the arbitrator found a taint with regard to one portion of an integrated agreement then the result would be the same as if it was an executory contract under the Bankruptcy Code with five lease schedules as part of one integrated agreement where the debtor couldn't perform all five. It's an all-up or nothing. And if that's the case, there would not have been a reinstatement for all five instead of one. That's the natural outflow of what their argument is which is that if you've got a taint on an integrated agreement which is nonsoluble then the whole agreement falls not that the whole agreement becomes good. And so, what you have here is someone who got the benefits of four dealerships. Then after they got the four dealerships on the reinstatement decided to sue and is now making an argument which is I want my cake, I want to eat it, too, in the context of a statute that doesn't provide for this type of relief.

Your Honor, if you'd just bear with me just one

second, I just want to check my notes to see if I --

THE COURT: Sure.

MR. STEINBERG: -- have answered your questions.

(Pause)

MR. STEINBERG: I think, Your Honor, when you said -- you asked my adversary the question did the Dealer Arbitration Act trump the wind-down agreement for all purposes and he answered no that it was incumbent on you to try to make the two consistent and coherent that he was essentially making the argument that I'm asking Your Honor to, as well, which is that the wind-down agreement had vitality and it was modified for purposes of the covenant not to sue solely for the purposes of doing the binding arbitration procedure consistent with the statute that Congress had subsequently passed. Thank you.

THE COURT: Okay. Thank you. Mr. Snyder, reply?

MR. SNYDER: Your Honor, to first argue what is a covered dealership, what is a not covered dealership to use executory contract analyses versus using franchise law analyses, using California law versus Title 11 law, that's another reason why the California court has jurisdiction because, again, what Mr. Steinberg is doing is saying well, look, Judge, you have jurisdiction. You can apply bankruptcy law between two nondebtor parties as to what means a covered dealership under the Federal Arbitration Act. And any of the 600 dealers who applied for arbitration under GM could do that

as well. And it seems to me that if Congress meant to give dealers and the AAA jurisdiction over these acts then by a natural extension, he meant them to be final and binding. Counsel for New GM sort of takes the car and then he hits a brake. He says the covenant not to sue was abrogated by the Dealer Arbitration Act but it stops there, that there is no right after the arbitration. And that is not true and also doesn't address the question of federal question jurisdiction that the federal court can possess jurisdiction over.

And he raised the Thomas case, Your Honor, but the statute involved in the Thomas case is the Federal Insecticide Fungicide and Rodenticide Act. In that statute, Your Honor, and I cite to Section 136a(c)(1)(F)(iii) of Title 7: "The FIFRA arbitration scheme allows judicial review of 'the findings and determinations of the arbitrator' only in the instance of fraud, misrepresentation or other misconduct by one of the parties to the arbitration or the arbitrator. This provision protects against arbitrators who abuse or exceed the powers or willfully misconstrue their mandate under the governing law." So Title 7 allowed for judicial review or allowed for a response to Your Honor's question as to what happens when an arbitrator acts inappropriately. Those last quotes, by the way, Your Honor, were the Thompson v. Union Carbide, 473 U.S. at 592.

Here there's nothing. There's no ability for Rally

or any of the 600 dealers to get redress as a direct result of the arbitrator's conduct no matter what it is. And so what they're saying is everybody, come back here. And we just don't believe that's appropriate under the case law. It's not appropriate under Union Carbide. It's not appropriate under Vaden. And it's not appropriate, we would suggest, under the Second Circuit law.

Your Honor, the statute is less than a year old. Of course, the cases we need to use are cases by analogy which are the FAA statutes. So under the FAA -- I'm sorry -- line of cases, there are agreements. Agreed. But that doesn't mean the arguments aren't consistent because the AAA rules assume that if you're a party to the arbitration you've agreed to consent to the outcome. In the Second Circuit case, in the Idea Nuova case, the statute is silent just like the statute -- I'm sorry -- the agreement is silent just like the statute here is silent. AAA rules apply and we're not saying anything else. And the Second Circuit said if the AAA rules apply then whatever the arbitrator says is final and binding and the unhappy party can then go to the district court and try to confirm that arbitration. Makes sense. That's all we're seeking to do here. The statute is silent. To suggest that we have no right of judicial review of an arbitration belies the fact that every stage plus Title 9 allow for confirmation, vacature, review of arbitrations.

Now, Mr. Steinberg is right. The statute 48(c) only speaks to judgment. And maybe the California district court'll say you can only seek to confirm the judgment. You can't seek to vacate it. You can't seek to modify it. And interprets Rule 48(c) that way as counsel did. But why can't Rally have the chance to allow California law to do that?

Your Honor, this is important. I'd like to go through the wind-down agreement and the jurisdiction sections because they are not inconsistent with the relief we're seeking here. This is from GM's own motion. "The Court retains exclusive jurisdiction to enforce and implement the terms of this order, the MSPA," which is the wind-down agreements, "and each of the agreements executed in connection therewith, including the deferred termination agreement in all respects including, but not limited to, retaining jurisdiction to resolve any disputes with respect to or concerning the deferred termination agreements."

There's no dispute regarding the deferred termination agreements at all. There's a dispute as to whether Chevy is a covered dealership under the Dealer Arbitration Act. We take no position as to whether this Court -- the sale order speaks for itself. Section 13 of the wind-down agreement. "Continuing jurisdiction. By executing this agreement, Dealer hereby consents and agrees that the bankruptcy court shall retain full complete and exclusive jurisdiction to interpret,

enforce and adjudicate disputes concerning the terms of this agreement and any matters related therein and survives termination."

Absolutely. There's an October 31st deadline. The wind-down agreement sets that out. We're bound to the extent we're bound under the wind-down agreement. We've asked GM to extend the October 31st date because of the late hour. They've refused. So now we have to deal with the October 31st deadline or get an extension by a court of competent jurisdiction.

But we're not addressing any of those provisions. Our -- we are seeking jurisdiction based on the Dealer Arbitration Act and not on the sale order and not on the wind-down agreements. This Court still has jurisdiction over those.

Your Honor, the argument about timing -- no good deed goes unpunished. They answered on September 7th and came into this court on September 10th. And then when we tried to get a hearing date as quickly as possible, we agreed we wouldn't go to the court in California to seek a stay if we could get a hearing date on October 4th. And we've abided by our agreement and we're anxiously awaiting whatever the Court's determination is going to be. But we deferred to this Court first because that's where New GM went. And nobody delayed here. As soon as the motion was filed, we sought a quick hearing and we got one thanks to chambers and Your Honor's courtesy. But -- I believe I'm finished.

THE COURT: All right. Very well. All right. We're going to take a recess. I don't know how long it's going to take me. But you needn't be here before 4:30. And I'll come out with a ruling as soon thereafter as I can. We're in recess.

(Recess from 4:04 p.m. until 5:30 p.m.)

THE COURT: Have seats, please. I apologize for keeping you all waiting. In these jointly administered cases under Chapter 11 of the Code, General Motors LLC, which I'll normally refer to as New GM, moves for an order enjoining Rally Dealership from interfering with New GM's ability to, as it was put, to reform its dealership platform pursuant to a previous order I entered, from vacating or modifying an arbitration decision and from pursuing that effort in California district court.

Rally was a GM dealership that was being closed pursuant to an agreement that was acquired by New GM from Old GM. The Dealer Arbitration Act, which was subsequently signed into law, provided an opportunity for dealers such as Rally to become reinstated as New GM dealers, if they were successful in a binding arbitration proceeding, with New GM.

Rally won its arbitration proceeding with respect to three of its brands but not its Chevrolet brand. Rally is attempting to have this arbitration award modified or vacated in a federal district court in California. New GM argues that

there is no right to modify the arbitration award and, additionally, that my Court is the only forum that can hear this issue. In addition, New GM argues that Rally has been interfering with New GM's establishment of an alternate Chevy dealership in violation of its agreement with New GM.

While I understand the difficulties faced by dealers such as Rally as a consequence of the events of last year, the motion must be granted. The following are my findings of fact and conclusions of law in connection with this determination.

As facts, I find that on July 5th, 2009, I entered the 363 sale order. That sale order authorized and approved a master purchase agreement dated as June 26, 2009, often referred by the parties as the MPA, between Old GM and an entity that later became New GM. Pursuant to the MPA and the 363 sale order, on July 10, 2009, New GM purchased substantially all of Old GM's assets free and clear of Old GM's liabilities except as expressly assumed by New GM under the MPA.

As part of the transactions that were approved under the 363 sale order, Old GM entered into and assigned to New GM certain deferred termination agreements, which we refer to as wind-down agreements, which had originally been entered into between Old GM and certain of its authorized dealers. These agreements had been offered to dealers as an alternative to outright rejection of their dealer sales and service

agreements, which we sometimes refer to as dealer agreements under the rights afforded to debtors to reject executory contracts under 365 of the Code. The wind-down agreements provided, among other things, that in exchange for certain payments and other consideration, the affected dealers' dealer agreements would terminate no later than October 31, 2010.

In December 2009, Congress enacted into law a new statute called the Dealer Arbitration Act which gave wind-down dealers such as Rally the opportunity to seek reinstatement to the GM dealer network through a binding arbitration process. Rally timely filed a request for arbitration and an arbitration was held in May before an arbitration -- arbitrator in California. On June 8, 2010, the arbitrator issued an award directing New GM to reinstate Rally's Buick, Cadillac and GMC dealer agreements but ruling that Rally's Chevrolet dealer agreement should not be reinstated. New GM is now currently attempting to establish another Chevrolet dealership in the Palmdale, California area where Rally is located. During this process, the owner of Rally has continued to lobby New GM to reinstate his Chevy dealership. After various proceedings, New GM determined to relocate the Chevy dealership to Lancaster, California which triggered an action by Palmdale against the city of Lancaster in the Superior Court of California. Palmdale claims that the terms of an agreement between Lancaster and the new Chevy dealership violated a state law